

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELECTRA REALTY CO. and
ELECTRA PRODUCTS CO., INC.

Defendants.

Civil Action
No.2:06-CV-2238

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the North Penn 6 Site in Lansdale, Montgomery County, Pennsylvania ("the Site").

B. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*

b. "Closing" shall mean that transaction at which the consideration for the Property is paid and title to the Property is transferred.

c. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

i. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

j. "Parties" shall mean the United States and the Settling Defendants.

k. "Property" shall mean that parcel or parcels located at 200 West 5th Street Lansdale Borough, Montgomery County, Pennsylvania 19446, bearing Tax Identification Numbers 11-0005348005 and 11-00053336107.

l. "Remedial Action" shall mean the response actions, excluding operation and maintenance, described in the Records of Decision issued by EPA for the Site on September 29, 1995 and August 10, 2000.

m. "Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has incurred or will incur in connection with the Site.

n. "Plaintiff" shall mean the United States.

o. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

p. "Settling Defendants" shall mean Electra Realty Co., a general partnership, and Electra Products Co., Inc.

q. "Settling Owner Defendant" shall mean Electra Realty Co.

r. "Site" shall mean the North Penn 6 Superfund site, encompassing approximately 1000 acres in and around the Borough of Lansdale, Montgomery County, Pennsylvania.

s. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF PAST RESPONSE COSTS

4. Plaintiff enters into this Consent decree based on Settling Defendants' representations regarding their financial condition and their conduct in the management of hazardous substances on the Property.

a. This Consent Decree does not constitute an adjudication of Settling Defendants' ability to pay any amount.

b. Settling Defendants contend that they have a limited ability to pay the response costs incurred in connection with the Site, and have submitted all the financial information, including documents, requested by plaintiff to Plaintiff to support this contention. Plaintiff has reviewed this information, and in reliance on the truth and completeness of that information and Settling Defendants' representations, Plaintiff determined that the financial terms embodied in this Consent Decree with Settling Defendants are appropriate based upon the Settling Defendants' limited ability to pay the response costs incurred by Plaintiff. Settling Defendants, by signing this Consent Decree, certify that, to the best of their knowledge, information, and belief:

(i) the financial data and information provided to Plaintiff are true, accurate, and complete. A list of the documents containing those data and information is set forth in Appendix A to this Consent Decree ;

(ii) such financial data and information provided to Plaintiff fairly, accurately, and materially sets forth Settling Defendants' financial circumstances; and

(iii) Settling Defendants' financial circumstances have not materially changed between the time the data and information were submitted to the United States and the time Settling Defendants executed this Consent Decree.

5. Plaintiff's entry into this Consent Decree is made in express reliance and is dependent upon Settling Defendants' financial certifications contained in Paragraph 4 (b), above. If, at any time, the United States determines that Settling Defendants' financial certification was false, inaccurate, or incomplete as to any representation, the United States reserves the right to petition the Court for further relief from Settling Defendants including, but not limited to, reimbursement of all Response Costs incurred at or in connection with the Site which have not been recovered or, if the United States deems it appropriate, to institute further action based upon CERCLA or the terms of this Consent Decree and any violation thereof. Should the United States petition the Court for further relief or institute further action pursuant to this Paragraph, Settling Defendants waive their right to assert any statute of limitations, laches, waiver, or estoppel defenses to such petitions or such further action. This reservation shall be in addition to and not in place of any remedies the United States may have for false statements made to the United States including, but not limited to, the sanctions provided by 18 U.S.C. § 1001.

6. If Settling Defendants do not elect the option provided by Section VI (Sale of Site Property), they shall pay to the EPA Hazardous Substance Superfund \$350,000.00 in reimbursement of Response Costs plus an additional sum for Interest on that amount calculated as simple interest on an annual basis from the Thirty-First (31st) Day after the date of entry of this Consent Decree. No Interest shall be due on the \$350,000.00 amount if it is paid within the

first Thirty (30) days of entry. In any event, full payment shall be made within One Hundred Twenty (120) days of entry of this Consent Decree. The selection of this option may be exercised at any time within the first One Hundred Twenty (120) days by Settling Defendants paying the \$350,000.00 plus interest, if any, to the U.S. Department of Justice account indicated in Paragraph 8. Upon request Plaintiff will timely provide Settling Defendants an Interest calculation to a suggested date certain so that proper payment may be made. It is expressly understood that:

- a. Settling Defendants may obtain some or all of the funding to make the \$350,000.00 payment through the voluntary sale of the Property to a third person, but neither inability to consummate that sale nor a lower than expected sale price shall relieve Settling Defendants of their obligation to make the \$350,000.00 payment.
- b. The voluntary sale pursuant to subparagraph "a" preceding does not trigger or constitute the Mandatory Sale of Site Property contemplated by Section VI of this Decree.
- c. The transferable covenant not to sue referenced in Paragraphs 34-38 of this Decree would be offered to either the voluntary purchaser pursuant to Subparagraph "a" preceding or to the identified purchaser pursuant to Section VI (Mandatory Sale of Site Property).
- d. Time may be of the essence in achieving appropriate assurances to a lender or voluntary purchaser under the terms of this paragraph, and the United States will fully cooperate with Settling Defendants to achieve such a loan or sale and will reasonably consider an extension of the 120 day option period set forth in this Paragraph if Settling Defendants and any lender or prospective purchaser have been proceeding promptly and in good faith to complete said loan or sale.
- e. If any extension of the 120 day option period is granted to Settling Defendants, interest will continue to accrue on the \$350,000.00 sum until it and such interest as is due are paid to the U.S. pursuant to Paragraph 8.

7. If Settling defendants elect the option provided by Section VI (Sale of Site Property), they shall not be required to make the payment described in Paragraph 6, but instead shall pay the sum of \$35,000 to the EPA Hazardous Substance Superfund in reimbursement of Response Costs plus an additional sum for Interest on that amount calculated as simple interest on an annual basis from the Thirty-First (31st) day after the date of entry of this Consent Decree. No Interest shall be due on the \$35,000.00 amount if it is paid within the first Thirty (30) days of entry. In any event, full payment shall be made within One Hundred Twenty (120) days of entry of this Consent Decree.

8. Payments required by Paragraphs 6 and 7 shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT

procedures, referencing USAO File Number 1999VO1060, the EPA Region and Site Spill ID Number 03W9, and DOJ Case Number 90-11-2-06024/15. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of Pennsylvania following lodging of the Consent Decree. Any payments received by the Department of Justice after 3:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendants shall send notice to EPA and DOJ that payment has been made in accordance with Section XVI (Notices and Submissions) and to:

Docket Clerk (3RC00)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia PA 19103-2029

VI. MANDATORY SALE OF SITE PROPERTY

9. Settling Defendants may elect to comply with the requirements of this Section VI by notifying EPA in writing no later than One Hundred Twenty (120) days after entry of this Consent Decree of their election to do so. If Settling Defendants give such notice, they shall thereafter be bound to comply with the terms of this Section VI and to make the payment described in Paragraph 7, but shall not be required to make the payment described in Paragraph 6. If Settling Defendants fail to successfully complete the \$350,000.00 full cash payment option set forth in Paragraph 6 by the conclusion of the One Hundred Twenty (120) day period except as otherwise modified pursuant to Paragraph 6 d., they shall be deemed to have elected compliance with this Section VI, they shall thereafter be required to comply with this Section VI, and shall be required to make the payment described in Paragraph 7.

10. Within sixty (60) days after Settling Defendants' election to proceed under Section VI of this Consent Decree, Settling Owner Defendant shall obtain an appraisal of the Property prepared by a state-licensed and certified general real estate appraiser with commercial experience and shall send the appraisal to EPA and the Department of Justice at the addresses identified in Section XVI (Notices and Submissions) of this Consent Decree. EPA reserves the right to have an independent appraisal prepared by a state-licensed and certified general real estate appraiser with commercial experience for the Property to determine an appraisal value for the purposes of this Paragraph. After receipt of the appraisal submitted by Settling Owner Defendant, EPA will notify Settling Owner Defendant in writing whether EPA proposes to exercise the right reserved in this Paragraph to obtain an appraisal of the Property.

11. Within thirty (30) days of receipt of the written notification of EPA's decision under Paragraph 10, Settling Owner Defendant shall provide to EPA the names, addresses, telephone numbers, and commission or fee schedules of at least two licensed brokers, dealers, or agents in close proximity to the Property who usually deal with the type of property in question. Settling Owner Defendant cannot act as a broker.

12. EPA shall select a broker, dealer or agent from those proposed by Settling Owner Defendant pursuant to Paragraph 11, or in the event that EPA deems such brokers, dealers or agents unacceptable, in any other manner deemed appropriate by the United States.

13. Commencing within fifteen (15) days after EPA notifies Settling Owner Defendant of the EPA's selection of a broker, dealer or agent in accordance with Paragraphs 11 and 12, Settling Owner Defendant shall, for the period of one (1) year, use its Best Efforts to sell the Property. "Best Efforts," for purposes of this Paragraph, shall include, but not be limited to:

(a) listing the Property with a broker, dealer, or agent who usually deals with the type of property in question and is approved by EPA pursuant to Paragraph 12 of this Consent Decree;

(b) responding to the reasonable inquiries of prospective buyers;

(c) allowing the Property to be shown at all reasonable times; and

(d) assisting the broker, dealer or agent in any other reasonable way requested in an effort to sell the Property at the highest price possible and as quickly as possible.

14. Settling Owner Defendant shall ensure that the listing agreement with the broker, dealer or agent provides that said broker, dealer or agent shall timely provide to EPA and DOJ copies of all advertising published with respect to the Property, indicating when such advertising is/was displayed. Copies shall be considered timely if the copies arrive at EPA and DOJ within the month such advertising is/was displayed. The United States reserves the right to direct the selected broker, dealer and/or agent, in writing, to add, delete, or otherwise reasonably modify advertising copy.

15. Settling Owner Defendant agrees that it shall not execute a contract for the sale of the Property, without prior notice to, and approval by, the United States of the terms of any proposed sale. Settling Owner Defendant agrees that it will not hold a mortgage from the purchaser of the Property. If Settling Owner Defendant identifies a prospective purchaser for the Property and the United States in its sole, unreviewable discretion determines that such prospective purchaser is suitable in accordance with EPA's *Bona fide* Prospective Purchaser policies, Settling Owner Defendant shall convey the Property to the prospective purchaser upon the written approval of the United States.

16. Settling Owner Defendant agrees to close the sale of the Property within sixty (60) days of execution of the contract for sale of the Property, unless otherwise agreed to by the United States.

17. If a contract acceptable to the United States for sale of the Property is not entered into within 1 year from the date of entry of this Decree, or if the Settling Owner Defendant does not close the sale of the Property within 60 days after the first anniversary of the date of entry of this Decree, The United States may, in its sole and unreviewable discretion require that the Property be sold at public auction.

VII. PAYMENT OF PROCEEDS FROM SALE OF PROPERTY

18. Within fifteen (15) days of Closing on the sale of the Property (either through a broker or at auction), Settling Owner Defendant shall pay to the United States, as partial reimbursement of Response Costs, a sum equal to 65 percent (65%) of the "net proceeds" of the sale of the Property. The net proceeds of the sale of the Property shall be calculated by subtracting from the purchase price the following costs: (a) the real estate agent commission (including advertising costs), if any; (b) recording fees; (c) transfer taxes; and (d) reasonable attorney fees related solely to the sale of the Property and the Closing. At the same time as the Settling Owner Defendant pays the 65% of the net proceeds from the sale of the Property Settling Owner Defendant shall provide the United States with an accounting identifying the purchase price, the net proceeds, and each item subtracted from the purchase price to obtain the "net proceeds" amount.

19. Payment pursuant to Paragraph 18 shall be made by electronic funds transfer in accordance with instructions provided to Settling Owner Defendant by the United States following lodging of the Consent Decree. Any payments received by the United States after 3:00 p.m. Eastern Time shall be credited on the next business day. Notice of payment shall be sent to those persons listed in Section XVIII (Notices and Submissions) at the time payment is made and shall reference USAO File Number 1999VO1060, the EPA Region and Site Spill ID Number 03W9, and DOJ Case Number 90-11-2-06024/2.

20. The payment required by Paragraph 18 of this Consent Decree is in addition to the partial payment of Past Response Costs required by Paragraph 7 of this Consent Decree.

21. Plaintiff's agreement to Settling Defendants' payments required by this Consent Decree is based on Settling Defendants' ability to pay Response Costs and Interest as set forth in financial information provided by Settling Defendants to Plaintiff, as described in Paragraph 4.

b. Plaintiff reserves the right to take action under this Consent Decree or, if it deems it appropriate, to institute a new and separate action to recover additional payment of response costs and Interest for the claims alleged in the amended complaint if Plaintiff determines that Settling Defendants' financial information or representations made in the documents provided by Settling Defendants to Plaintiff are, in any material respect, false or inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the United States may have under law or equity in such event.

22. Settling Defendants shall bear their own costs and attorney's fees.

VIII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

23. Interest on Late Payments. In the event that any payment required by Section V (Reimbursement of Past Response Costs), Section VIII, Paragraph 24 (Stipulated Penalty), or Paragraph 18 Payment of Proceeds from Sale of Property) is not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

24. Stipulated Penalty.

a. If any amounts due to EPA under this Consent Decree are not paid by the required date except as modified by paragraph 6 d., Settling Defendants shall pay to EPA as a stipulated penalty, in addition to the Interest required by Paragraph 23, \$150 per violation per day for the first 30 days that such payment is late and \$500 per violation for each day thereafter that such payment is late. If any Settling Defendant fails to comply with Section XIII.(Site Access), or Section XV.(Access to Information), such Settling Defendant shall pay to EPA, as a stipulated penalty, \$250 per violation per day of such noncompliance.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

U.S. EPA, Region III
Attention : Superfund Accounting
P.O. Box 360515
Pittsburgh PA 15251-6515

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the EPA Region and Site Spill ID Number 03W9, USAO File Number 1999VO1060, and DOJ Case Number 90-11-2-06024/15. Copies of check[s] paid pursuant to this Paragraph, and any accompanying transmittal letter[s], shall be sent to EPA and DOJ as provided in Section XVII. (Notices and Submissions) and to:

Docket Clerk
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia PA 19103-2029

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

25. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

26. Payments made under Paragraphs 23-25 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

27. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

IX. COVENANT NOT TO SUE BY PLAINTIFF

28. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 30 (Reservation of Rights by United States) and Paragraphs 31 and 32 (Reopeners), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraphs 6 and 7 (Payment of Past Response Costs) and Section VIII, Paragraphs 23 (Interest on Late Payments) and 24 (Stipulated Penalty), and Section VII, Paragraph 18, (Payment of Proceeds from Sale of Property). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and to the partners of Electra Realty Co., including, the Anthony Lipsi Residuary Trust (for the benefit of Jean Lipsi), Daniel A. Lipsi, Donna A. Lipsi, Peter A. Lipsi, and Deborah D. Lipsi, and to the officers, directors and shareholders of Electra Products Co., Inc. to the extent the liability of those partners and other persons derives from that of the two named defendants. Such covenant does not extend to any other person except to the extent provided by Section X (Transfer of Covenant) set forth below.

29. This covenant not to sue is conditioned upon the veracity and completeness of the financial information provided to the United States by the Settling Defendants. If, at any time, the United States determines that any Settling Defendant's financial certification under Section V. (Reimbursement of Response Costs), Paragraph (4)(b) of this Consent Decree was false, inaccurate, or incomplete as to any representation, such Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and the covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose Plaintiff's rights to pursue any other causes of action arising from any Settling Defendant's false or materially inaccurate information.

30. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 28 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to:

a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;

- b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- c. criminal liability;
- d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 6906; and
- e. liability for costs incurred or to be incurred by the United States that are not within the definition of Response Costs.

31. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

32. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

33. For purposes of Paragraph 31 the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 32 the information and the

conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

X. TRANSFER OF COVENANT

34. Notwithstanding any other provisions of this Consent Decree, all of the rights, benefits and obligations conferred upon Settling Defendants under this Consent Decree may be assigned or transferred a person meeting each of the following requirements.

a. That person acquires title to, or another property interest in, the Property after the date of entry of this consent decree.

b. Prior to acquiring such interest, that person held no property interest in the Property and never conducted any activities thereon other than inspections and investigations in connection with the acquisition.

c. Prior to acquiring such interest, that person never disposed or released any material at or on the Property, never arranged for the disposal of any material at to on the Property, and never transported any material to the Property for disposal.

35. A person wishing to have the rights, benefits and obligations of this Consent Decree transferred to it shall submit to EPA (i) a request for such transfer together with a consent to the transfer by the person(s) then owning the Property, (ii) a signed consent to be bound by the terms of this Consent Decree, (iii) a written consent to be subject to the jurisdiction of this Court for purposes of enforcement of this Decree, and (iv) a certification that such person meets all of the qualifications set out in Paragraph 31, above. After any investigation EPA deems appropriate, EPA will approve the application if it finds that the consents described in the prior sentence are adequate and that the transferee meets the qualifications set out in Paragraph 31, above. The transfer of rights, benefits and obligations shall be effective upon EPA's approval.

36. Beginning on the date of EPA's approval of the transfer of rights, benefits and obligations, the transferee shall comply not only with the terms of this Decree, but also with the requirements of Subsections (D), (E), (F) and (G) of Section 101(40) of CERCLA. If transferee fails to in any respect to comply with those Subsections, the covenant not to sue of Section IX and the contribution protection afforded by Section XII shall become null and void as to the transferee.

37. The assignor or transferor agrees to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Consent Decree.

38. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Consent Decree except as EPA and the assignor or transferor agree otherwise and modify this Consent Decree, in writing, accordingly.

XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

39. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Response Costs or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at the Site for which Response Costs were incurred or will be incurred; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Response Costs.

40. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

41. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

42. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response costs incurred or to be incurred by any person with respect to the Site and all response actions taken or to be taken at the Site by any person.

43. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling

Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

44. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of Response Costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section IX.

XIII. SITE ACCESS

45. Commencing upon the date of lodging of this Consent Decree, Settling Defendants agree to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Property and to any other property owned or controlled by Settling Defendants to which access is determined by EPA to be required for the implementation of this Consent Decree, or for the purpose of conducting any response activity related to the Site, including but not limited to:

- a. Monitoring of investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XII. (Access to Information); and
- g. Assessing Settling Defendants' compliance with this Consent Decree.

Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the

Resource Conservation and Recovery Act, 42 U.S.C. § 6927, and any other applicable statutes or regulations.

XIV. NOTICE OF OBLIGATIONS TO SUCCESSORS-IN-TITLE

46. Within 15 days after entry of this Consent Decree, Owner Settling Defendant shall record either a certified copy of this Consent Decree or a notice of the entry of this Consent Decree with the Recorder's Office, Registry of Deeds or other appropriate office, Montgomery County, Commonwealth of Pennsylvania. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Consent Decree, and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

47. The obligations of Owner Settling Defendant with respect to the provision of access under Section XI.(Site Access), shall be binding upon Owner Settling Defendant and upon any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, Owner Settling Defendant shall record at the Recorder's Office, Registry of Deeds, or other appropriate office where land ownership and transfer records are maintained for the property, a notice of obligation to provide access under Section XIII (Site Access) and related covenants, if any. Each subsequent instrument conveying an interest in the Property shall reference the recorded location of such notice and covenants applicable to the Property.

48. Owner Settling Defendant and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendants' obligations under this Consent Decree, including their obligation to provide or secure access pursuant to Section XIII. (Site Access), shall continue to be met by Owner Settling Defendant. In no event shall the conveyance of an interest in the Property release or otherwise affect the liability of Settling Defendants to comply with this Consent Decree.

XV. ACCESS TO INFORMATION

49. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site, or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site. Settling Defendants shall be deemed to have satisfied the requirements of this Paragraph 49 of this Consent Decree if they have made a reasonable and diligent investigation and search for all documents relevant to: (1) activities that were conducted at the Property prior to the effective date of this Consent Decree, (2) businesses that operated at the Property prior to the effective

date of this Consent Decree, and (3) the liability of any person for response actions conducted and to be conducted at the Site and have delivered all such documents and information to EPA, or have asserted that certain documents are privileged in accordance with the procedures set forth in Paragraph 50. b.

50. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Documents or information determined by EPA to be confidential will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Settling Defendants may assert that certain documents, records or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing documents, they shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

51. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XVI. RETENTION OF RECORDS

52. Until 10 years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site activities that were conducted at the Property and/or businesses that operated at the Property prior to the effective date of this Consent Decree or the liability of any person for response

actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Settling Defendants shall be deemed to have satisfied the requirements of Paragraphs 52 and 53 of this Consent Decree if they have made a reasonable and diligent investigation and search for all documents relevant to: (1) activities that were conducted at the Property prior to the effective date of this Consent Decree, (2) businesses that operated at the Property prior to the effective date of this Consent Decree, and (3) the liability of any person for response actions conducted and to be conducted at the Site and have delivered all such documents and information to EPA, or have asserted that certain documents are privileged in accordance with the procedures set forth in Paragraph 53.

53. After the conclusion of the document retention period in the preceding Paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records or documents to EPA. Settling Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

54. By signing this Consent Decree, each Settling Defendant certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA all information currently in its possession or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XVII. NOTICES AND SUBMISSIONS

55. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DOJ# 90-11-2-06024/2)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Thomas A. Cinti (3RC42)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

As to Settling Defendants:

Douglas R. Blazey, Esq.
Elliott Greenleaf & Siedzikowski, P.C.
Union Meeting Corporate Center
925 Harvest Drive, Suite 300
Blue Bell, Pennsylvania 19422

XVIII. RETENTION OF JURISDICTION

56. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIX. INTEGRATION AND APPENDICES

57. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the list of the documents containing the financial data and information submitted to the United States by Settling Defendants.

XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

58. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

59. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXI. EFFECTIVE DATE

60. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XXII. SIGNATORIES/SERVICE

61. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

62. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

63. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

SO ORDERED THIS _____ DAY OF _____, 2006.

Robert F. Kelly
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Electra Realty Co., et al., Civil Action No. 2:06-CV-2238, relating to the North Penn 6 Superfund Site.

FOR THE UNITED STATES OF AMERICA

SUE ELLEN WOOLDRIDGE
Assistant Attorney General

12/27/06
Date

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section

Date

WILLIAM HUTCHINS
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
202-514-1461

PATRICK L. MEEHAN
United States Attorney
Eastern District of Pennsylvania

Date

MARGARET L. HUTCHINSON
Assistant United States Attorney
Eastern District of Pennsylvania
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106-4476
215-861-8282

Date: _____

DONALD S. WELSH
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia PA 19103-2029

Date: _____

WILLIAM C. EARLY
Regional Counsel, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia PA 19103-2029

Date: _____

THOMAS A. CINTI
Senior Assistant Regional Counsel, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia PA 19103-2029

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Electra Realty Co., et al., Civil Action No. 2:06-CV-2238, relating to the North Penn 6 Superfund Site.

FOR DEFENDANT ELECTRA REALTY CO.

Date: _____

Printed or typed name:

Title:

FOR ELECTRA PRODUCTS CO., INC

Date: _____

Printed or typed name:

Title:

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

Address: _____

